

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.5759 OF 2005
IN
FIRST APPEAL NO.1300 OF 2005

The New India Assurance Co. ...Applicant
Vs.
Raghunath Abhiman Wagh & Anr. ...Respondents

Mrs Arti B. Barve for the Appellant.
Shri V.N. Tayade for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : JUNE 15, 2006.

P.C.:

1. Heard the learned Advocate appearing for the
Applicant and the learned Advocate appearing for the
Respondent No.2.

2. The Applicant- Insurance Company has preferred
the Appeal seeking to challenge the judgment and award
dated 31st August, 2004 passed by the Motor Accident
Claims Tribunal. By the impugned Judgment and Award
made in a claim under section 166 of the Motor
Vehicles Act, 1988, compensation has been awarded to
the Respondent No.2 on account injuries sustained by
him in the motor accident. Finding of the Tribunal
based on certificate of civil surgeon Dhule is that
the Respondent No.2 has sustained 50% permanent
disability. Compensation of Rs.98,781/- has been

granted alongwith interest in favour of the Respondent No.2 by taking notional income at Rs.15,000/- per year.

3. The tractor involved in the accident was admittedly insured with the Applicant-Insurance Company on the date of the accident. Defence of the Applicant is that there was a breach of terms and conditions of the policy on the part of the insured and therefore, the Applicant-Insurance Company is not liable to satisfy the award which is made against the insured. This contention of the Applicant-Insurance Company has been rejected by the Tribunal. This is not a case where leave under section 170 of the said Act of 1988 was granted in favour of the Appellant/Applicant.

4. Even if the Applicant-Insurance Company succeeds in the Appeal on the basis of the special defence based on breach of terms and conditions of the policy, the award made against the insured will remain. Therefore, even if compensation amount is paid by the Applicant to the original claimant, in the even of success of the Appellant/Applicant in the

First Appeal, the amount paid can be always recovered by the Applicant from the insured. In the fight between the insured and the insurer, the original claimant cannot be allowed to suffer especially when there is no dispute about existence of a valid policy of insurance on the date of the accident.

5. Hence, no case is made out for grant of stay.

Application is rejected. It is made clear that in the event the Applicant succeeds in the Appeal, the Applicant will be free to recover the amount of compensation paid to the original claimant from the insured. It is also made clear that payment of amount of compensation by the Applicant will be subject to final outcome of the Appeal.

JUDGE